



Appeal Decision

Site visit made on 29 November 2022

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 04 January 2023

Appeal Ref: APP/Y1138/W/22/3298329

Ashdowne Care Home, Tiverton, Devon EX16 6SJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Halcyon Care against the decision of Mid Devon District Council.
 - The application Ref 20/01458/FULL, dated 18 September 2020, was refused by notice dated 3 December 2021.
 - The development proposed is the erection of single storey extension to care home.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of single storey extension to care home at Ashdowne Care Home, Tiverton, Devon EX16 6SJ, in accordance with the terms of the application, Ref:20/01458/FULL, dated 18 September 2020, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Halcyon Care against Mid Devon District Council (the Council). That costs application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is the effect of the proposed development on parking and highway safety.

Reasons

4. Policy DM3 of the Mid Devon Local Plan 2013-2033 (the Local Plan) concerns transport and air quality and provides that development must provide safe access to the transport network. Policy DM5 of the Local Plan confirms that development must provide an appropriate level of parking, taking into account accessibility of the site and the type, mix and use of the development. In respect of the use of the site as a care home, Policy DM5 of the Local Plan indicates that that type of development falls within Non-residential Use Class C2 and which requires provision of one parking space per bedroom.
5. The appeal site is located within a residential area, with the appeal proposal being for provision of a single storey extension to the front of an existing care home. The proposed extension would provide additional space for use as a treatment room, a store and visiting pods, as well as for extending the existing office and kitchen facilities and alterations to an existing lobby. The information provided in support of the planning application indicates that the appeal

scheme would not result in the creation of any additional bedrooms at the appeal building.

6. As such, and in light of the wording of Policy DM5 of the Local Plan, in the event that no additional bedrooms were created as a result of the proposed development, there would be no requirement to provide additional parking spaces. A planning condition has been suggested that would ensure that the additional rooms created by the proposed development, would not become additional bedrooms.
7. Whilst it is acknowledged that paragraph 4.19a of the supporting text to Policy DM5 of the Local Plan refers to "the minimum number of parking spaces for the whole development site" and that "remaining parking provision (and more if preferred) should be distributed appropriately throughout the development", it is apparent from the wording of that section of text that such considerations only apply to the calculation of minimum number of parking spaces in respect of residential use that would fall under Use Classes C3 and C4. As noted above, the development falls within Use Class C2 and, consequently, the supporting text described above would not apply to the scheme.
8. It has been put to me that there are parking issues within Orkney Mews and that the proposed development would increase pressure for on street parking close to the site, to the detriment of safety and amenity of local residents. It is maintained by the Council that whilst the appeal proposal would not result in additional bedrooms, it would result in the loss of an existing parking space at the care home, which would have an equivalent effect to a proposal that did increase bedroom space at the appeal building.
9. At the date of my visit, I did not see any inconsiderate parking of vehicles within Orkney Mews, nor any particular evidence of high levels of parking stress. I appreciate that my observations reflect only a snapshot in time. However, at my visit I noted the limited width of the highway and limited availability of on street parking spaces close to the site.
10. It is noted that the care home provides sixty bedrooms for residents and that the number of parking spaces at the care home are limited in number. However, the level or provision of car parking spaces in respect of previously permitted development is not a matter before me, nor are considerations of how internal layout or configuration of rooms have been permitted under previous grants of planning permission.
11. Nonetheless, whether the proposed development would lead to a loss of existing parking provision and its consequent effect on the highway network, is a matter that requires consideration. In this instance, the Council have put it to me that the proposed extension would remove a parking space to the front of the appeal building and, in support of that contention, have provided photographs showing a space being used as parking at the site and which would be developed to provide the proposed extension.
12. The evidence before me indicates that the Appellant does not consider that space to the front of the care home to be a dedicated parking space. Whilst I have not been provided with any details or plans from previous permissions that would confirm or restrict the use of that area for parking provision, it appears, from the Committee minutes, that use of that area for parking was

created in the twelve months prior to the Committee meeting. It therefore seems likely that the space is not for parking provision as required under previous planning permissions.

13. As such, there would not appear to be any loss of parking provision at the site. Whilst it appears from the evidence that that space can be used as parking space, even in the event that proposal would result in loss of such a space, given the existing substantial under provision of dedicated parking associated with the care home, its loss would not have a severe impact on the highway network.
14. In summary of the above, there is nothing to suggest that the proposed development would not ensure safe access to the transport network or that the appeal proposal before me would give rise to significant levels of vehicular movement. Furthermore, the proposal would not result in an increase in bedrooms at the site and which can be adequately secured by planning condition. As such, and given the above findings, the appeal scheme would not conflict with the provisions of Policies DM3 or DM5 of the Local Plan.

Other Matters

15. Further to matters described above, interested parties raise additional objections to the appeal scheme on the grounds of the impact on a hedge separating the site from nearby dwellings and in respect of impact on the living conditions of nearby residents with regards noise disturbance, overlooking and overshadowing.
16. I acknowledge the evidence and submissions provided in respect of existing activities at the care home and with regards to disturbance caused by delivery and construction traffic. Noise from the existing use of the care home is a civil matter that falls outside the scope of this appeal. However, it is noted that construction traffic could have the potential to cause significant disturbance in terms of noise and the use of the local road network, given the limited width of the road and density of housing within Orkney Mews.
17. Nonetheless, noise and disturbance from construction and associated traffic generated by deliveries and construction workers can be controlled via a construction environmental management plan to be secured by condition as described below, and which would ensure that impacts from construction noise and disturbance would be appropriately managed. I therefore conclude that, subject to certain planning conditions described below, the scheme would not have an unacceptable adverse effect on nearby residents' living conditions with regards to noise disturbance.
18. Furthermore, in respect of overshadowing, overlooking and loss of privacy, whilst the extension would result in the built form of the care home moving closer to nearby dwellings, given the presence of a substantial hedge separating the site from nearby properties, and by reason of the separation distance, I do not find that a single storey extension to the care home would result in unacceptable overshadowing or result in loss of privacy at nearby dwellings. In terms of the potential impact on the hedge arising from the proposed development, a planning condition requiring details of root protection measures would ensure no unacceptable impact on amenity value of that hedge.

Conditions

19. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance and the National Planning Policy Framework. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord.
20. It is important that the construction process takes place without significant detriment to the living conditions of existing residents, or to the operation of the highway network. Accordingly, a pre-commencement condition is necessary to require the submission of a Construction Environmental Management Plan for approval by the Local Planning Authority. Conditions are also necessary that require details of root protection measures for the abovementioned hedge to be provided to the Local Planning Authority in the interests of living conditions of nearby residents and in the interests of the character and appearance of the area. In that respect whilst I note the Appellant's submissions regarding the pre-commencement condition and that it is their intention to retain the hedge, I find that the planning conditions are necessary and reasonable and so as to protect the residential amenity the hedge provides, during construction of the scheme.
21. The Council has recommended a condition removing certain permitted development rights with reference to "external ventilation or extraction units". However, the Planning Practice Guidance (the PPG) provides that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. Furthermore, the PPG confirms that "the scope of such conditions needs to be precisely defined, by reference to the relevant provisions" and "so that it is clear exactly which rights have been withdrawn or limited". No such specific details of relevant provisions of the General Permitted Development Order appear to have been provided. Consequently, I have not included that suggested condition which seeks to restrict permitted development rights.
22. Where necessary, and also in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.

Conclusion

23. For the reasons given above I conclude that the appeal should be allowed.

Mr A Spencer-Peet

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin before the expiry of three years from the date of this permission.
2. The development hereby approved shall in all respects accord strictly with drawing numbers: Location Block Plan 0a and Existing Parking 3a received by the Local Planning Authority on 11 August 2021 and drawing number: Proposed Drawing 2e received by the Local Planning Authority on 15 October 2021.
3. Before the commencement of development, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. In respect to the protection of residential amenity and the local environment, the CEMP shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise, vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development and manage Heavy/Large Goods Vehicle access to the site. It shall include details of the hours of operation and measures to be employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways. The following specific details should also be included in respect to highway safety:
 - (a) the timetable of the works;
 - (b) daily hours of construction;
 - (c) any road closure;
 - (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the Local Planning Authority in advance;
 - (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
 - (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
 - (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority. This may include the establishment of a 'wait away' system for all deliveries;
 - (h) hours during which no construction traffic will be present at the site;
 - (i) the means of enclosure of the site during construction works;
 - (j) Details of the amount and location of construction worker parking, including measures to avoid parking on the adjoining residential streets;

- (k) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site; and
- (l) Photographic evidence of the condition of adjacent public highway prior to commencement of any work.

Once approved the CEMP shall be adhered to at all times, unless otherwise first agreed in writing with the Local Planning Authority.

4. Before the commencement of development, a method statement detailing how works will be carried out within the root protection area (RPA) identified on submitted Tree Protection Plan (Ref: D14 455 P1) shall be submitted to and agreed in writing by the Local Planning Authority. This shall include measures such as:
 - (a) The utilisation of pile foundations,
 - (b) Hand dig only within the RPA,
 - (c) The presence of an arborist to review works in the RPA and provide advice where roots are encountered,
 - (d) Where roots over 2.5cm are encountered that they are suitably pruned back by an arborist.

Once approved the method statement shall be adhered to at all times, unless otherwise first agreed in writing with the Local Planning Authority.

5. For the duration of the development, the submitted scheme of tree and hedgerow protection measures identified in the submitted Tree Protection Plan (Ref: D14 455 P1), shall be installed and shall remain implemented in their entirety for the duration of the construction of the development and may only be moved, removed or dismantled following completion of the development hereby permitted, or with the prior consent of the Local Planning Authority in-writing.
6. The additional space provided within the development hereby permitted shall at no time be used to provide additional bedrooms.